

Intact Insurance Company

Condominium Corporation Directors' and Officers' Liability Form (Claims Made)

Various provisions in this Form restrict coverage. Read the entire Form carefully to determine rights, duties and what is and is not covered. Words and phrases that appear in quotation marks have special meaning as defined in **Section II Definitions**.

Section I Coverage

In consideration of the payment of premium in reliance upon the representations made to the Insurer during the process of obtaining this insurance and subject to the Limits of Insurance shown in the "Declaration Page(s)", and all the exclusions, limitations, definitions, conditions and other terms of this Form, the Insurer agrees with the "organization" as follows:

1. Insuring Agreement

- a. To pay on behalf of any "Insured" "loss" which such "Insured" shall become legally obligated to pay, except for such "loss" for which the "organization" shall indemnify such "Insured", because of any "claim" or "claims" made during the "policy period" against any "Insured", individually or collectively, for a "wrongful act" which occurs during the "policy period".
- b. To pay on behalf of the "organization" all "loss" which the "organization" shall be required or permitted by the applicable law and any by-laws to indemnify the "Insured" because of any "claim" or "claims" made during the "policy period" against any "Insured", individually or collectively, for a "wrongful act" which occurs during the "policy period".

2. Extensions

- a. Extension of Insurance

The "Insured" and the "organization" shall be entitled to an extension of insurance granted by this Form in respect of any "wrongful act" which occurs prior to the "policy period" if "claim" or "claims" are made during the "policy period" and provided:

- (1) that the "Insured", at the effective date of the insurance had no knowledge of, and could not reasonably foresee, any circumstances which might result in a "claim"; and
- (2) that there is no other insurance applicable to such "wrongful act".

- b. Estates and Legal Representatives

This Form is extended to cover "loss" sustained as a result of any "claim" arising from a "wrongful act" of any "Insured" made against the estates, heirs, legal representatives or assigns of any "Insured" who is incompetent, insolvent or bankrupt.

- c. Optional Extension Period

If this Form is cancelled or not renewed by the Insurer for any reason other than non-payment of premium, the "organization" has the right to purchase an Optional Extension Period of 365 days following the effective date of cancellation or non-renewal. However, coverage during the Optional Extension Period shall only apply to "claims" made in respect of "wrongful acts" committed prior to such effective date.

In order to invoke the Optional Extension Period:

- (1) The "organization" must give notice within 30 days of the effective date of cancellation or non-renewal.
- (2) The "organization" must pay an additional premium equal to seventy-five percent (75%) of the full annual premium.

The purchase of the Optional Extension Period does not increase the Limits of Insurance.

3. Limit of Insurance

The Limit of Insurance shall be the maximum aggregate amount payable hereunder inclusive of "Costs, Charges and Expenses" for all "Loss" sustained during the "Policy Period".

4. Defence – Settlement – Supplementary Payments

As respects insurance afforded by this Form, the Insurer shall defend any “claim” against any “Insured” alleging any “wrongful act” which is covered by this Form even if such “claim” is groundless, false or fraudulent, but the Insurer may make such investigation, negotiation and settlement of any “claim” as it deems expedient. The Insurer shall not be obligated, however, to pay any “claim” or judgment or to defend any suit after the Limit of Insurance has been exhausted by payments of “loss”.

5. Exclusions

The Insurer shall not be liable to make payment for “loss” in connection with any “claim” made against any “Insured”:

- a. for
 - (1) any actual or alleged bodily injury, sickness, disease or death of any person;
 - (2) any actual or alleged damage to, destruction of, or loss of use of any tangible property; or
 - (3) any actual or alleged personal injury including libel or slander, wrongful entry or eviction; discrimination or other invasion of the right of private occupancy.
- b. directly or indirectly arising out of, resulting from, or on account of, or relating to any actual or threatened "abuse".
- c. based upon or arising out of any “wrongful act” or circumstances or situation which has been the subject of notice given under any prior policy.
- d.
 - (1) which arises out of or would not have occurred in whole or in part but for the actual, alleged or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants" at any time;
 - (2) for any “loss”, cost or expense arising out of any:
 - (a) Request, demand or order that any "Insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants";
 - (b) "Claim" or action by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, decontaminating, stabilizing, remediating, neutralizing, or in any way responding to, or assessing the effects of "pollutants".

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, odour, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- e. based upon or attributable to any “wrongful act” in procuring, effecting and maintaining insurance, or with respect to amount, form, conditions or provisions of such insurance.
- f. based upon or arising out of:
 - (1) any “Insured” gaining any personal profit or advantage to which they were not legally entitled;
 - (2) the receipt by any “Insured” of remuneration to which they were not legally entitled; or
 - (3) any dishonest, fraudulent or criminal act or omission.

Note: Any "wrongful act" pertaining to any “Insured” shall not be imputed to any other person for the purpose of determining the applicability of this Exclusion f;
- g. made against the Insurer for sums which are recoverable from the insured “organization” for salary, compensation or bonuses voted to any “Insured” by the Board of Directors of the “organization”.
- h. for anything other than money damages.
- i. in any way connected with a violation of any municipal, provincial or federal civil rights laws.
- j.
 - (1) for liability imposed by or arising from any nuclear liability act, law or statute, or any law amendatory thereof;
 - (2) for loss with respect to which an “Insured” under this Form is also insured under a contract of nuclear energy liability insurance (whether the “Insured” is unnamed in such contract and whether or not it is legally enforceable by the “Insured”) issued by the Nuclear Insurance Association of Canada or any other Insurer or group or pool of Insurers or would be insured under any such policy but for its termination upon exhaustion of its limit of liability;
 - (3) for loss resulting directly or indirectly from the nuclear energy hazard arising from:

- (a) the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an "Insured";
- (b) the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility;
- (c) the possession, consumption, use, handling, disposal or transportation of fissionable substances, or of other radioactive material (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an "Insured".

As used in this Form:

- (1) The term "nuclear energy hazard" means the radioactive, toxic, explosive or other hazardous properties of radioactive material;
- (2) The term "radioactive material" means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances which may be designated by any nuclear liability act, law or statute, or any law amendatory thereof as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy;
- (3) The term "nuclear facility" means:
 - (a) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium, and uranium or any one or more of them;
 - (b) any equipment or device designed or used for (i) separating the isotopes of plutonium, thorium and uranium or any one or more of them, (ii) processing or utilizing spent fuel, or (iii) handling, processing or packaging waste;
 - (c) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if at any time the total amount of such material in the custody of the "Insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
 - (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material;
and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations;
- (4) The term "fissionable substance" means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.
Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, agreements, or limitations of this Form other than above stated.

k. due to war, invasion, or act of foreign enemy.

l. for:

- (1) erasure, destruction, corruption, misappropriation, misinterpretation of "data"; or
- (2) erroneously creating, amending, entering, deleting or using "data"; and
any loss of use arising therefrom.

m. arising out of the distribution or display of "data", by means of an Internet Website, the Internet, an intranet, extranet, or similar device or system designed or intended for electronic communication of "data".

n. arising directly or indirectly, in whole or in part, out of "Terrorism" or out of any activity or decision of a government agency or other entity to prevent, respond to or terminate "Terrorism". This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "claim".

o. (1) or any other cost, "loss" or expense incurred by others, arising directly or indirectly, from the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread of, reproduction, discharge or other growth of any "fungi" or "spores" however caused, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, cleanup, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of "fungi" or "spores";

(2) any supervision, instructions, recommendation, warnings, or advice given or which should have been given in connection with the testing for, assessment, monitoring, removal, abatement, mitigation, treatment, detoxification or neutralization of, “fungi” or “spores; or

(3) any obligation, whether imposed under statute or common law, to share damages with, to pay or repay someone else who must pay damages because of the “loss”, damage or activity referred to in (1). or (2). above.

This exclusion applies regardless of the cause of the “loss” or damage, other causes of the “loss”, damage, expense or costs or whether other causes acted concurrently or in any sequence to produce the “loss”, damage, expenses or costs.

p. nor does this insurance cover, any actual or alleged liability whatsoever for any “loss or losses”, damage, cost or expense directly or indirectly caused by, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the “loss”, damage, cost or expense.

Section II Definitions

Wherever used in this Form:

1. **"abuse"** means, but is not limited to, sexual, physical, mental, psychological or emotional abuse or molestation, sexual harassment, sexual assault, assault or battery.
2. **"claims"** means any judicial or administrative proceeding initiated against any “Insured” for damages or other relief.
3. **"costs, charges and expenses"** means legal fees, and expenses incurred in defending, investigating or monitoring a "Claim" and appeals and the cost of appeal, attachment or similar bonds, excluding salaries and expenses of any "Insured".
4. **"coverage territory"** means Canada or the United States of America (including its territories and possessions).
5. **"data"** means representations of information or concepts in any form.
6. **"Declaration Page(s)"** means the Declaration Page(s) applicable to this Form.
7. **"fungi"** includes, but is not limited to, any form or type of mould, yeast, mushroom, mildew, wet or dry rot, or bacteria whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of any “Fungi” or “Spores” or resultant mycotoxins, allergens, or pathogens.
8. **"Insured"**, either in the singular or plural, means
 - a. any person who was, now is or shall be a duly elected or appointed director or officer of the “organization”;
 - b. the estates, heirs, legal representatives or assigns of deceased persons who were directors or officers of the “organization”;
 - c. the legal representatives or assigns of directors or officers of the “organization” in the event of their incompetency, insolvency or bankruptcy.
9. **"loss"** means damages, judgements, settlements and "Costs, Charges and Expenses", excluding:
 - a. punitive or exemplary damages;
 - b. criminal or civil fines or penalties;
 - c. taxes other than those for which any "Insured" is personally liable under statute for non-remittances by the "Organization";
 - d. matters deemed uninsurable under law.
10. **"Organization"** means the condominium corporation named in the "Declaration Page(s)".
11. **"Policy Period"** means the period shown in the "Declaration Page(s)" plus the Optional Extension Period if applicable.
12. **"Spores"** includes, but is not limited to, any reproductive particle or microscopic fragment produced by, emitted from or arising out of any fungi”.
13. **"Terrorism"** means an ideologically motivated unlawful act or acts, including but not limited to the use of violence or force or threat of violence or force, committed by or on behalf of any group(s), organization(s) or government(s) for the purpose of influencing any government and/or instilling fear in the public or a section of the public.
14. **"Wrongful Act"** means any actual or alleged error or misstatement or misleading statement or act or omission or neglect or breach of duty by any “Insured” while acting solely in their respective capacities as directors and officers of the “organization”.

Section III Conditions

1. Warranty and Severability Clause:

- a. The application for this Form is considered as part of this Form, which is issued based upon the statements contained in the application and in reliance on any other material submitted to the Insurer.
- b. In the event that material misrepresentations have been made within the application, then insurance provided under this form shall be void and of no effect.
- c. This Form is a severable contract or series of contracts with each "Insured". This does not increase the Limit of Insurance shown in the "Declaration Page(s)"

2. Canadian Currency Clause

All Limits of Insurance, premiums and other amounts as expressed in this Form are in Canadian currency

3. Termination

- a. This Form may be terminated:
 - (1) By the Insurer giving to the "organization":
 - (a) 30 days' written notice of termination by registered mail;
 - (b) 5 days' written notice of termination personally delivered;
 - (c) 15 days' written notice of termination by registered mail when cancelling for non-payment of premium;
 - (2) By the "organization" at any time on request.
- b. Where this Form is terminated by the Insurer:
 - (1) The Insurer shall refund the excess of premium actually paid by the first Named Insured over the pro rata premium for the expired time, but, in no event shall the pro rata premium for the expired time be deemed to be less than any minimum retained premium specified; and
 - (2) The refund shall accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.
- c. Where this Form is terminated by the first Named Insured:
 - (1) And where the premium is developed on other than an estimated basis, the Insurer will refund the excess of the paid premium above the short rate premium for the time the Form has been in force calculated in accordance with the short rate premium table in use by the Insurer, and except in Quebec, subject to the retention of the minimum premium, if any, provided by the Form; or
 - (2) Where the premium is developed by an estimated basis, the Insurer will refund the excess of the paid premium, if any, provided by the Form.
- d. The refund may be made by money, postal or express company money order or cheque payable at par.
- e. The fifteen days mentioned in clause a. (1) (c) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.
- f. The Insurer will mail or deliver the notice to the first Named Insured's last mailing address known to the Insurer.

In Quebec the following conditions apply:

Termination takes effect either 15 or 30 days after receipt of the notice at the last known address of the first Named Insured, depending upon the reason for cancellation.

- (1) The Insurer will mail or deliver the notice to the first Named Insured's last mailing address known to the Insurer.
- (2) The "policy period" will end on the date termination takes effect.
- (3) If this Form is terminated, the Insurer will send the first Named Insured any premium refund due. If the Insurer cancels, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The termination will be effective even if the Insurer has not made or offered a refund.

4. False or Fraudulent Claims

If any "Insured" of the "organization" shall make any "claim" under this Form knowing the same to be false or fraudulent, this insurance shall become null and void and all rights hereunder of the "Insured" and the "organization" shall be forfeited.

5. Insured's Duties in the Event of "Loss"

If during the "policy period" or during the Optional Extension Period any "claim" is made against any "Insured", the "organization" or the "Insured" shall, as a condition precedent to their right to be indemnified under this Form:

- (a) give written notice to the Insurer containing particulars sufficient to identify the "Insured" and the "organization", and provide full information with respect to the time, place and circumstances of the event complained of, and the names and addresses of the claimants and of available witnesses, as soon as practicable;
- (b) immediately forward to the Insurer any writ, notice of action, statement of claim, letter, document or advice received by them or their representative;
- (c) co-operate with the Insurer and, upon the Insurer's request, assist in making settlements, in the conduct of "claims" and in enforcing any right of contribution or indemnity against any person or organization which may be liable to the "Insured" because of "loss" with respect to which insurance is afforded under this Form and attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses;
- (d) not voluntarily make any payment, assume any obligation or incur any expense, except at their own cost.

6. Subrogation

In the event of any payment under this Form, the Insurer shall be subrogated, to the extent of such payment, to all the rights of recovery of the "Insured" and the "organization" against any person, and the "Insured" or the "organization" shall execute all papers required and shall do everything that may be necessary to secure such rights including the execution of such documents necessary to enable the Insurer to effectively bring suit in the name of the "Insured" or the "organization". The "Insured" or the "organization" shall do nothing after loss to prejudice such rights.

7. Assignment:

This insurance may not be assigned without the Insurer's consent.

8. Changes:

The "Insured" and the "organization" are not authorized to make changes to this Form without the Insurer's consent. The Form's terms can be amended or waived only by endorsement issued by the Insurer, and made part of this Form.

9. Legal Action Against the Insurer:

No person or organization has a right under this Form:

- a. To join the Insurer as a party or otherwise bring the Insurer into an action asking for compensatory damages from an "Insured"; or
- b. To sue the Insurer under this Form unless all of its terms have been fully complied with.

A person or organization may sue the Insurer to recover on an agreed settlement or on a final judgment against any "Insured" obtained after an actual trial; but the Insurer will not be liable for compensatory damages that are not payable under the terms of this Form or that are in excess of the applicable Limit of Insurance. An agreed settlement means a settlement and release of liability signed by the Insurer, the "organization" and the claimant or the claimant's legal representative. Every action or proceeding against the Insurer shall be commenced within one year next after the date of such judgement or agreed settlement and not afterwards. If this Form is governed by the law of Quebec every action or proceeding against the Insurer shall be commenced within three years from the time the right of action arises.

10. Notice to Insureds

All "Insureds" hereunder agree that the "organization" is authorized to act on behalf of all "Insureds" with respect to the settlement of "claims", the giving and receiving of notice of cancellation, receiving any returned premium that becomes payable under this Form and the receipt of any payment which may be due.

11. Other Insurance:

If other valid and collectible insurance is available to the "Insured" for a "Loss" the Insurer covers under this Form, the Insurer's obligations are limited as follows:

- a. As this insurance is excess over any other insurance, whether primary, excess, contingent or on any other basis, except such insurance as is specifically purchased to apply in excess of this Form's Limits of Insurance, the Insurer will pay only the Insurer's share of the amount of the "loss", if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the "loss" in the absence of this insurance: and
- (2) The total of all deductible and self-insured amounts under this or any other insurance.
- b. The Insurer will have no duty under this Form to defend any "claim" or action that any other Insurer has a duty to defend. If no other Insurer defends, the Insurer may undertake to do so, but the Insurer will be entitled to the "Insured's" and the "organization's" rights against all other Insurers.

12. Defence and Settlement:

The Insurer has the right to defend any "claim" for "loss" arising out of a "wrongful act" even if any of the allegations are groundless, false or fraudulent, or alternatively may at the option of the Insurer, give its written consent to the defence of any such "claim" by the "organization".

The "organization" and its directors and officers will not, except at their own cost, voluntarily admit liability, make a payment, assume any obligation or incur any expense without the Insurer's consent, such consent not to be unreasonably withheld.

If a "claim" made against an "Insured" involves both covered and not covered allegations and/or parties, the "organization" and the Insurer shall use their best efforts to agree upon a fair and proper allocation of costs.

13. Notification:

- a. In the event of a "claim", notice must be given to the Insurer as soon as practicable.
- b. If during the "policy period", any "Insured" or the "organization" become aware of a "wrongful act" which they believe will lead to a "claim", notice must be given to the Insurer as soon as practicable. Any "claim" arising out of such "wrongful act" shall then be deemed to have been made during the "policy period". Such notice must state why it is believed that a "claim" will be made.